

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JAY SCOTT CLARK,

Petitioner,

v.

Case No. 4:21-cv-11938
Honorable F. Kay Behm

NOAH NAGY,

Respondent.

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ORDER DENYING WITHOUT PREJUDICE THE MOTION TO STAY
THE HABEAS CASE (ECF No. 12)

This is a pro se habeas case brought pursuant to 28 U.S.C. § 2254. This matter is before the Court on Petitioner Jay Scott Clark's motion to stay the proceedings and to hold his habeas petition in abeyance so that he can return to the state court to exhaust additional constitutional claims. The Respondent has already filed an answer to the current habeas petition and the state court record.

A federal district court has discretion to stay a mixed habeas petition, containing both exhausted and unexhausted claims, to allow a petitioner to present unexhausted claims to the state courts and then return to federal court on a perfected petition. *Rhines v. Weber*, 544 U.S. 269, 276 (2005). Stay and abeyance is available only in "limited circumstances" such as when the one-year statute of

limitations poses a concern, and when the petitioner demonstrates “good cause” for the failure to exhaust state remedies before proceeding in federal court, the petitioner has not engaged in intentionally dilatory litigation tactics, and the unexhausted claims are not “plainly meritless.” *Id.* at 277.

In this case, Petitioner offers no details about the need for a stay, including his delay in investigating/discovering additional evidence or claims, or the substance of any new evidence or claims. He thus fails to sufficiently allege or establish that a stay and abeyance is warranted under the *Rhines* factors. Moreover, the Court concludes dismissal of the case is inappropriate at this stage given the potential issues that Petitioner could face under the one-year statute of limitations when he returns to this Court after exhausting his remedies.

Accordingly, the Court **DENIES** without prejudice Petitioner’s motion to stay.

IT IS SO ORDERED.

Dated: March 25, 2024

s/F. Kay Behm
F. KAY BEHM
United States District Judge